

FILED

Case 1:08-cv-04130

Document 1

Filed 07/21/2008

AAC

Page 1 of 85

JULY 21, 2008

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

United States Bankruptcy Court

NORTHERN DISTRICT OF ILLINOIS
219 S. Dearborn Street
Chicago, IL 60604

Kenneth S. Gardner, Bankruptcy Clerk

Date 7/21/2008

Michael Dobbins, Clerk
United States District Court
Northern District of Illinois
219 S Dearborn Street
Chicago, IL 60604

Case Number 08A00198, 08B00427
Case Name Chapa v Remos
Notice of Appeal Filed 5/23/2008
Appellant Marissa Chapa

Dear Sir:

Pursuant to **Bankruptcy Rule 8007** transmitted herewith is the Record on Appeal. The Record on Appeal consist of:

<input checked="" type="checkbox"/>	Transmittal Letter and Civil Cover Sheet	<input checked="" type="checkbox"/>	Notice of Appeal
<input checked="" type="checkbox"/>	Designation and Statement of Issues	<input checked="" type="checkbox"/>	Copy of Documents Designated
<input type="checkbox"/>	Transcript of Proceeding	<input type="checkbox"/>	Exhibits
<input type="checkbox"/>	In Forma Pauperis	<input type="checkbox"/>	Expedited Notice of Appeal

Additional Items Included

☒ Amended Designation of Content of the Record and Statement of Issues

☐ Total Volumes Transmitted

The following items will be transmitted as a supplemental to the Record on Appeal

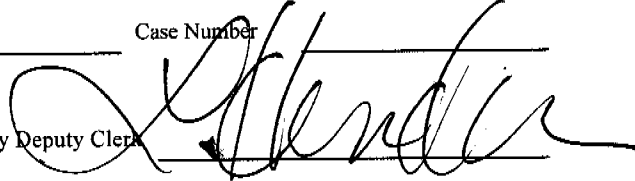
☐

FILED

JUL 21 2008 TC

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

**08CV4130
JUDGE KENDALL
MAGISTRATE JUDGE DENLOW**

Case Number _____
By Deputy Clerk 

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No.: 08 BK 472
Debtor.)	
	)	Chapter 7
<hr style="width: 30%; margin-left: 0;"/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF APPEAL TO DISTRICT COURT

PLEASE TAKE NOTICE, that Marissa Chapa, the Plaintiff, appeals under 28 U.S.C. 158(a)(1), from orders dated April 29, 2008 and May 13, 2008, attached hereto and order from May 22, 2008 announced in Court, of the Bankruptcy Judge Pamela S. Hollis, entered in the adversary proceeding, ordering: 1) the dismissal for want of prosecution; 2) denial of Plaintiff's Motion Vacate a Order of April 29, 2008, Reopening the adversary proceeding, and Reinstating her Complaint against Defendant; and 3) denial of Plaintiff's Motion to Reconsider, respectively. (See Order, Exhibit 1 and Notice of Electronic Filing of Order, Exhibit 2).

Attached hereto is Plaintiff's Statement of Election, requesting her appeal to be heard by the District Court pursuant to 28 U.S.C. §158(c)(1). (See Statement, Exhibit 3).

The names of all other parties to the order appealed from and the names, address and telephone numbers of their respective attorneys are as follows:

William Remos, the Debtor
5774 N. Oleander
Chicago, Illinois 60631

Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
Phone: 312-782-9792
Fax: 312-782-0483
Counsel for William Remos

William T Neary
Office of the U.S. Trustee, Region 11
219 S. Dearborn
Room 873
Chicago, Illinois 60604
Phone: 312-886-5785
Fax: 312-886-5794
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
Phone: 312-876-6670
Fax: 312-876-6241
Trustee

Respectfully submitted,

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CLOSED, APPEAL

**U.S. Bankruptcy Court
Northern District of Illinois (Chicago)
Adversary Proceeding #: 08-00198
Internal Use Only**

Assigned to: Pamela S. Hollis
Related BK Case: 08-00472
Related BK Title: William P. Remos and
Marissa Chapa
Related BK Chapter: 7
Demand:

Date Filed: 04/04/08
Date Terminated: 04/30/08
Date Dismissed: 04/29/08

*Nature[s]
of Suit:* 62 Dischargeability - 523(a)(2),
false pretenses, false
representation, actual fraud
68 Dischargeability - 523(a)(6),
willful and malicious injury

Plaintiff

Marissa Chapa

represented by **Katherine L Haennicke**
Tressler Soderstrom Maloney
& Priess LLP
233 S Wacker Drive 22nd
Floor
Chicago, IL 60606
312 627-4131
Fax : 312 627-1717
Email: khaennicke@tsmp.com

This is to certify that the within and attached
document is a full, true and correct copy of
the original thereof as the same appears on
file in the office of the Clerk of the United
States Bankruptcy Court for the Northern
District of Illinois.

By KENNETH S. GARDNER
CLERK OF COURT

Dated 7/21/08
Deputy Clerk

Pete V Albanis
Tressler Soderstrom Maloney
& Priess LLP
233 South Wacker Drive 22nd
Floor

Chicago, IL 60606
 312 627-4198
 Fax : 312 627-1717
 Email: palbanis@tsmp.com
LEAD ATTORNEY

V.

Defendant

William P. Remos

represented by **Thomas Twomey**
 Zalutsky & Pinski Ltd
 20 N Clark St.
 Suite 600
 Chicago, IL 60602
 312 782-9792
 Fax : 312 782-0483
 Email: ecf@zaplawfirm.com

Filing Date	#	Docket Text
04/04/2008	1	Adversary case 08-00198. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), (68 (Dischargeability - 523(a)(6), willful and malicious injury)): Complaint by Marissa Chapa against William P. Remos. Fee Amount \$250. Status hearing to be held on 4/29/2008 at 10:30 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Attachments: # 1 Exhibit 1# 2 Exhibit 2) (Albanis, Pete) (Entered: 04/04/2008)
04/04/2008	2	<u>Summons Link</u> Summons Issued on William P. Remos Answer Due 05/5/2008 (Albanis, Pete) (Entered: 04/04/2008)

04/07/2008	3	Receipt of Complaint(08-00198) [cmp,cmp] (250.00) Filing Fee. Receipt number 8595808. Fee Amount \$ 250.00 (U.S. Treasury) (Entered: 04/07/2008)
04/29/2008	4	Order Dismissing Adversary Proceeding for want of prosecution. Signed on 4/29/2008 (Epps, Wanda) (Entered: 04/30/2008)
04/30/2008	5	Adversary Case 1-08-ap-198 Closed . (Epps, Wanda) (Entered: 04/30/2008)
05/05/2008	6	Notice of Motion and Motion to Vacate Filed by Pete V Albanis on behalf of Marissa Chapa. Hearing scheduled for 5/13/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/05/2008)
05/05/2008	7	Notice of Motion Filed by Pete V Albanis on behalf of Marissa Chapa (RE: <u>6</u> Motion to Vacate). Hearing scheduled for 5/13/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/05/2008)
05/13/2008	8	(E)Order Denying for the Reasons Stated on the Record Motion To Vacate (Related Doc # <u>6</u>). Signed on 05/13/2008. (Austin, Lynda) (Entered: 05/13/2008)
05/19/2008	9	Notice of Motion and First Motion for Relief from Judgment or Order Filed by Pete V Albanis on behalf of Marissa Chapa. Hearing scheduled for 5/22/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/19/2008)

05/19/2008	● <u>10</u>	Notice of Motion Filed by Pete V Albanis on behalf of Marissa Chapa (RE: <u>9</u> Motion for Relief from Judgment or Order). Hearing scheduled for 5/22/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/19/2008)
05/20/2008	● <u>11</u>	Notice of Motion and Motion to Approve Plaintiff's Motion for Reconsideration of the Court's May 13, 2008 Order Filed by Pete V Albanis on behalf of Marissa Chapa. Hearing scheduled for 5/22/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/20/2008)
05/20/2008	● <u>12</u>	Notice of Motion Filed by Pete V Albanis on behalf of Marissa Chapa (RE: <u>11</u> Motion to Approve,, <u>9</u> Motion for Relief from Judgment or Order). Hearing scheduled for 5/22/2008 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Albanis, Pete) (Entered: 05/20/2008)
05/21/2008	● <u>13</u>	Attachment(s) Proposed Order Filed by Pete V Albanis on behalf of Marissa Chapa (RE: <u>11</u> Motion to Approve,). (Albanis, Pete) (Entered: 05/21/2008)
05/21/2008	● <u>14</u>	Appearance Filed by Thomas Twomey on behalf of William P. Remos. (Twomey, Thomas) (Entered: 05/21/2008)
05/23/2008	● <u>15</u>	Notice of Appeal to District Court. Filed by Pete V Albanis on behalf of Marissa Chapa. Fee Amount \$255 (RE: [8] Order on Motion to Vacate, <u>4</u> Order Dismissing Adversary Proceeding). Appellant Designation due by 6/2/2008. Transmission of

		Record Due by 7/2/2008. (Attachments: # <u>1</u> Exhibit Order of April 29, 2008# <u>2</u> Exhibit Notice of Electronic Filing of Order of May 13, 2008# <u>3</u> Exhibit Statement of Election)(Albanis, Pete) (Entered: 05/23/2008)
05/23/2008	16	Receipt of Notice of Appeal(08-00198) [appeal,ntcapl] (255.00) Filing Fee. Receipt number 8874437. Fee Amount \$ 255.00 (U.S. Treasury) (Entered: 05/23/2008)
05/27/2008	● <u>17</u>	(E)Order Denying for the Reasons Stated on the Record Motion for Relief from Judgment or Order (Related Doc # <u>9</u>). Signed on 05/27/2008. (Austin, Lynda) (Entered: 05/27/2008)
05/27/2008	● <u>18</u>	Notice of Filing to Bk Judge and Parties on Service List (RE: <u>15</u> Notice of Appeal,). (Henderson, LaToya) (Entered: 05/27/2008)
06/02/2008	● <u>19</u>	Appellant Designation of Contents for Inclusion in Record and Statement of Issue On Appeal Filed by Pete V Albanis on behalf of Marissa Chapa. (RE: <u>15</u> Notice of Appeal,, <u>18</u> Notice of Filing Re: Appeal). (Albanis, Pete) (Entered: 06/02/2008)
06/02/2008	● <u>20</u>	Request for Transcript re: Appeal Filed by Pete V Albanis on behalf of Marissa Chapa. (RE: <u>15</u> Notice of Appeal,, <u>19</u> Appellant Designation and Statement of Issue, <u>18</u> Notice of Filing Re: Appeal). Transcript Due by 6/27/2008. (Albanis, Pete) (Entered: 06/02/2008)
06/02/2008	● <u>21</u>	Notice of Filing Filed by Pete V Albanis on behalf of Marissa Chapa (RE: <u>19</u> Appellant Designation and Statement of Issue, <u>20</u> Request for Transcript re: Appeal). (Albanis, Pete) (Entered: 06/02/2008)

07/07/2008	● <u>22</u>	Appearance Filed by Katherine L Haennicke on behalf of Marissa Chapa. (Haennicke, Katherine) (Entered: 07/07/2008)
07/18/2008	● <u>23</u>	Appellant Designation of Contents for Inclusion in Record and Statement of Issue On Appeal Filed by Katherine L Haennicke on behalf of Marissa Chapa. (RE: <u>19</u> Appellant Designation and Statement of Issue). (Haennicke, Katherine) (Entered: 07/18/2008)
07/18/2008	● <u>24</u>	Notice of Filing Filed by Katherine L Haennicke on behalf of Marissa Chapa (RE: <u>23</u> Appellant Designation and Statement of Issue). (Haennicke, Katherine) (Entered: 07/18/2008)

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No.: 08 BK 472
Debtor.)	
	)	Chapter 7
MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

**DESIGNATION OF THE CONTENT OF THE RECORD
AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

MARISSA CHAPA, Plaintiff-Appellant, by and through her attorneys, designates the following items to be included in the record on appeal to the United States District Court from 1) the Order Granting a Dismissal for Want of Prosecution entered on April 29, 2008; 2) the Order denying Chapa's Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate her Complaint against Defendant, entered on May 13, 2008 and 3) the Order denying Chapa's Motion to Reconsider, announced in court on May 22, 2008 and docketed May 27, 2008 (collectively the "Orders") and sets forth her statement of issues to be presented on appeal, as follows:

DESIGNATION OF THE CONTENT OF THE RECORD

<i>USBC N.D. IL Docket No. (including all exhibits)</i>	<i>Date</i>	<i>Description</i>
1	4/4/08	Plaintiff's Complaint for Adversary Case.
2	4/4/08	Summons Issued

3	4/7/09	Receipt of Complaint. Filing Fee. Receipt number 8595808. Fee Amount \$250.00.
4	4/29/09	Order Dismissing Adversary Proceeding for want of prosecution.
5	4/30/08	Adversary Case closed.
6	5/5/08	Notice of Motion and Motion to Vacate.
7	5/5/08	Notice of Motion.
8	5/13/08	Order Denying for the Reasons Stated on the Record.
9	5/19/08	Notice of Motion and First Motion for Relief from Judgment or Order.
10	5/19/08	Notice of Motion.
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13	5/21/08	Attachment(s) Proposed Order.
14	5/21/08	Appearance Filed by Thomas Twomey on behalf of William P. Remos
15	5/23/08	Notice of Appeal to District Court.
16	5/23/08	Receipt of Notice of Appeal.
17	5/27/08	Order Denying for the Reasons Stated on the Record Motion for Relief From Judgment or Order.
18	5/27/08	Notice of Filing to Bk Judge and Parties on Service List.

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

- Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in dismissing this matter for want of prosecution.

2. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in denying Chapa's Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate her Complaint against Defendant.

3. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in denying Chapa's Motion to Reconsider.

4. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in entering the Orders of April 29, 2008 and May 13, 2008 and in announcing the decision on May 22, 2008, which was docketed on May 27, 2008.

Dated: June 2, 2008

Respectfully submitted,

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borgia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on June 2, 2008 a copy of the foregoing document was served:

- Electronically filing via court ECF system and mailing, via U.S. Postal Service to the below parties:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792
Counsel for William Remos

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No.: 08 BK 472
Debtor.)	
	)	Chapter 7
<hr/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

**AMENDED DESIGNATION OF THE CONTENT OF THE RECORD
AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

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15	5/23/08	Notice of Appeal to District Court.
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18	5/27/08	Notice of Filing to Bk Judge and Parties on Service List.
19		Transcripts of Proceedings from April 29, 2008
20		Transcripts of Proceedings from May 13, 2008
21		Transcripts of Proceedings from May 22, 2008

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in dismissing this matter for want of prosecution.
2. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in denying Chapa's Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate her Complaint against Defendant.
3. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in denying Chapa's Motion to Reconsider.
4. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in entering the Orders of April 29, 2008 and May 13, 2008 and in announcing the decision on May 22, 2008, which was docketed on May 27, 2008.

Dated: July 18, 2008

Respectfully submitted,

MARISSA CHAPA

By: /s/ Katherine L. Haennicke
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on July 18, 2008 a copy of the foregoing document was served:

- Electronically filing via court ECF system and mailing, via U.S. Postal Service to the below parties:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
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Kerrie S Neal
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20 North Clark St
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Chicago, IL 60602
312 782-9792
Counsel for William Remos

MARISSA CHAPA

By: /s/Katherine L. Haennicke
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
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233 South Wacker Drive
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(312) 627-4000

KH1/cic/330258

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No. 08 BK 472
Debtor.)	
	)	Chapter 7
<hr/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF FILING

TO: **SEE ATTACHED SERVICE LIST**

Please take notice that on July 18, 2008 we electronically filed with the Clerk of the Court in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, an **Amended Designation of the Content of the Record and Statement of Issues to be Presented on Appeal**, a copy of which is hereby served on to you.

MARISSA CHAPA

By: /s/Katherine L. Haennicke
One of Her Attorneys

James K. Borgia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

SERVICE LIST

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
(312) 886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza, Ste 1200
Chicago, IL 60606
312-876-7100
Fax: 312-876-0288
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792
Fax: 312-782-0483
Counsel for William Remos

326118

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
)	Case No.: 08 BK 472
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)	Chapter 7
MARISSA CHAPA,)	
)	Honorable Pamela S. Hollis
Plaintiff,)	U.S. Bankruptcy Judge
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v.)	Adversary No. 08 A 198
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WILLIAM REMOS,)	
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Defendant.)	

**AMENDED DESIGNATION OF THE CONTENT OF THE RECORD
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STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

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2. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in denying Chapa's Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate her Complaint against Defendant.
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4. Whether the Bankruptcy Court erred as a matter of law and/or abused its discretion in entering the Orders of April 29, 2008 and May 13, 2008 and in announcing the decision on May 22, 2008, which was docketed on May 27, 2008.

Dated: July 18, 2008

Respectfully submitted,

MARISSA CHAPA

By: /s/ Katherine L. Haennicke
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on July 18, 2008 a copy of the foregoing document was served:

- Electronically filing via court ECF system and mailing, via U.S. Postal Service to the below parties:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792
Counsel for William Remos

MARISSA CHAPA

By: /s/Katherine L. Haennicke
One of Her Attorneys

James K. Borgia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Pamela S. Hollis Hearing Date April 29, 2008
Bankruptcy Case No. 08 B 472 Adversary No. 08 A 198
Title of Case Marissa Chapa v. William P. Remos
Brief
Statement of Motion STATUS HEARING ON COMPLAINT
Names and
Addresses of
moving
counsel
Representing

ORDER

For the reasons stated in open Court,

ENTER ORDERED that the complaint is dismissed for want of prosecution.

Pamela S. Hollis

cc: Pete V. Albanis (electronic notice)

William P. Remos

EXHIBIT

1

#324671

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
	)	Case No. 08 BK 472
William Remos,)	
	)	Chapter 7
Debtor.)	
	)	Honorable Pamela S. Hollis
<u>MARISSA CHAPA,</u>	)	U.S. Bankruptcy Judge
)	
Plaintiff,	)	Adversary Proceeding No.
)	
v.)	
)	
WILLIAM REMOS,)	
)	
Defendant.)	

COMPLAINT TO DETERMINE DISCHARGEABILITY

Marissa Chapa ("Chapa") for her Complaint against the Debtor/Defendant William Resmos ("Remos"), pursuant to Section 523(a)(2)(A) and (a)(6) of the United States Bankruptcy Code, state as follows:

I. Jurisdiction and Venue

1. This case was commenced on January 10, 2008 when Remos filed a Voluntary Petition under Chapter 7 of the United States Bankruptcy Code.

2. Plaintiff Marissa Chapa is a resident of Wood Dale, Illinois and a creditor of Remos, as a result of a judgment obtained against Remos in the amount of \$16,517.30 plus interest and costs.

3. This Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and venue is proper because the claim arose in the Northern District of Illinois.

II. Factual Background

4. Chapa is a creditor of Remos as a result of a state court judgment obtained against Remos in the amount of \$16,517.30 plus interest and costs, which was perfected through the service of a citation to discover assets on the judgment debtor.

5. Said judgment was entered in favor of the Chapa and against Remos in the case entitled *Chapa v. Remos*, Case No. 2007 M1 129859 in the Circuit Court of Cook County, Illinois, Municipal Division. Said judgment was granted on Counts I and II of Chapa's Complaint, alleging breach of promissory note and fraud. (The Complaint is attached hereto as Exhibit I).

6. On July 17, 2006, Chapa and Remos entered into a Promissory Note. (A true and accurate copy of the Note is attached as Exhibit A to the Complaint). Pursuant to the terms of the note Defendant was to pay \$9,000 plus 7% interest by December 17, 2006 or demand of money with a 30-day notice.

7. On July 27, 2006, Chapa and Remos amended to note to reflect additional amount borrowed by Remos. (A true and accurate copy of the Note is attached as Exhibit B to the Complaint). Pursuant to the terms of the note Defendant was to pay \$13,000 plus 7% interest by December 17, 2006 or demand of money with a 30 day notice.

8. On several occasions, Chapa demanded payment from Remos.

9. Remos breached his contractual obligations by unreasonably refusing to fulfill the terms and obligations under the Promissory note and refusing to pay the amount due and owing under the Promissory Note.

10. Remos willfully and intentionally mislead Chapa by misinforming her as to the following:

- (a) He intended to execute a loan in order to pay Chapa pursuant to the terms of the Promissory Note;
- (b) He needed to borrow an additional \$1200 in order to purchase insurance to cover the loan; and
- (c) He intended to use the additional \$1200 he borrowed from Chapa to secure the insurance and loan to pay her pursuant to the Promissory Note.

11. As a direct and proximate result of one or more of the aforementioned statements by Remos, Chapa lent an additional \$1,200 to Remos to secure the insurance and loan so that she could get paid.

12. Remos never intended to use the money to secure any insurance or any loan. Instead, upon information and belief, Remos used the money for other means.

13. The facts described above formed the basis for the judgment entered by the Circuit Court of Cook County in favor of Chapa and against Remos in the lawsuit described in Paragraph 5 above.

14. On May 31, 2007, the Illinois State Court entered a Judgment Order in favor of Chapa and against Remos on all counts of the Complaint in the amount of \$16,517.30, which remains unpaid. (Said judgment order is attached as Exhibit 2).

15. Remos was subsequently served with a Citation to Discover Assets with respect to said judgment to appear on October 24, 2007. Said Citation was filed on October 3, 2007.

16. Upon borrowing the original amount, Remos represented to Chapa that he was going to use the funds to pay off a tax liability debt owed to the Internal Revenue Service.

17. Upon information and belief, Remos did not pay off any monies owed to the IRS.

18. Remos maliciously and willfully defrauded Chapa by intentionally representing that he was using the funds to pay off the IRS debt, but instead used them for his personal benefit. Remos maliciously and willfully defrauded Chapa again by intentionally representing he was borrowing additional money to secure a loan to pay off the entire amount owed to Chapa.

COUNT I
(Complaint To Determine Dischargeability Of Debt)
11 U.S.C. § 523 (a)(2)(A) and (a)(6)

19. Section 523 (a)(2)(A) prevents a debtor from receiving a discharge with respect to any debt:

- (2) for money, property, services, or an extension, renewal or refinancing of credit, to the extent obtained by –
 - (A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

20. Section 523(a)(6) prevents a debtor from receiving a discharge with respect to any debt:

- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

21. Remos represented that the original funds he borrowed was to pay off a tax liability to the Internal Revenue Service. In addition, Remos represented that the additional money he was borrowing was to secure a loan to pay off his debt to Chapa.

22. Chapa relied on Remos's representations that he would pay off the IRS and subsequently, that he was obtaining a loan to pay off Chapa. Remos never intended to pay off the IRS liability or to obtain a loan to pay Chapa.

23. The actions of Remos were taken with the intent to deceive and defraud Chapa and to hinder, delay and defraud her out of her rights.

24. As a result, the Illinois State Court entered judgment in favor of the Chapa and against Remos in the amount of \$16,517.30 plus costs.

25. As a result of this bankruptcy, new information has come to light to show additional fraud. Remos represented to Chapa that he was borrowing the funds to pay of a debt to the IRS

26. Chapa has demonstrated all of the necessary elements to establish that said judgment constitutes an exception to discharge pursuant to Sections 523(a)(2)(A) and 523(a)(6) of the U.S. Bankruptcy Code.

WHEREFORE, Marissa Chapa prays that an order be entered directing that the judgment entered in favor of her and against William Remos in the amount of \$16,517.30 plus interest, costs and attorneys' fees, be held non-dischargeable and for such further relief as this Court deems proper.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

Panagiotis Albanis
James K. Borcia
Katherine L. Haennicke
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on April 4, 2008 a copy of the foregoing document was served upon the counsel of record listed by:

- Electronically filing via court ECF system:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792

Counsel for William Remos

By: /s/Panagiotis Albanis
One of Her Attorneys

#308550

Firm No. 14503

7751-1

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - MUNICIPAL DIVISION

MARISSA CHAPA,

Plaintiff,

v.

WILLIAM REMOS,

Defendant.

No.

Amount Claimed: \$13,000 + interest, costs and
attorney's fees

ED: 5/27

20071129859
CALENDAR/ROOM 1102
TIME 09:30
BREACH OF CONTRACTCOMPLAINT

NOW COMES the Plaintiff, MARISSA CHAPA, by and through her attorneys,
TRESSLER SODERSTROM MALONEY & PRIESS LLP, and for its Complaint for Breach of
Contract, and Common Law Fraud against the Defendant, WILLIAM REMOS, complains as
follows:

JURISDICTION AND VENUE ALLEGATIONS

1. Plaintiff, Marissa Chapa, ("Chapa"), is an individual residing in Wood Dale, IL 60191.
2. Defendant, William Remos ("Defendant") is an individual, upon information and belief, residing at 5774 N. Oleander; Chicago, Illinois 60631.
3. This Court has proper jurisdiction over the Defendant pursuant to 735 ILCS §5/2-209 as he resides within the State of Illinois.
4. Venue is proper in this court pursuant to 735 ILCS 5/2-101.

EXHIBIT

1

TSM & P
RECEIVED
APR 06 2007DIARIED DOCKETED
ATTY. 7751-1-57-655

BACKGROUND

5 On July 17, 2006, Chapa and Remos entered into a Promissory Note. (A true and accurate copy of the Note is attached as Exhibit A and incorporated herein). Pursuant to the terms of the note Defendant was to pay \$9,000 plus 7% interest by December 17, 2006 or demand of money with a 30 day notice.

6 On July 27, 2006, Chapa and Remos amended to note to reflect additional amount borrowed by Remos. (A true and accurate copy of the Note is attached as Exhibit B and incorporated herein). Pursuant to the terms of the note Defendant was to pay \$13,000 plus 7% interest by December 17, 2006 or demand of money with a 30 day notice.

7 On several occasions, Chapa demanded payment from Remos.

8 On December 19, 2006, a letter was sent to Remos demanding payment pursuant to the terms of the Promissory note. (A Copy of that letter is attached hereto as Exhibit C). Counsel sent another letter on February 15, 2007. (A Copy of that letter is attached hereto as Exhibit D).

9 As of March 15, 2007, Remos has not yet paid pursuant to the terms of the July 27, 2006 Promissory Note.

COUNT I
BREACH OF CONTRACT

10 Chapa adopts and realleges Paragraph 1 through 9 of this Complaint as though fully set forth herein.

11 At all times, Chapa has fulfilled her obligations under the Promissory note.

12. Remos breached his contractual obligations by unreasonably refusing to fulfill the terms and obligations under the Promissory note and refusing to pay the amount due and owing under the Promissory Note.

13. As a result of this breach, Chapa had been damaged due to the failure to pay the original amount plus interest.

WHEREFORE, Plaintiff, MARISSA CHAPA, respectfully requests that this Court enter judgment in her favor and against Defendant, WILLIAM REMOS in an amount in excess of \$13,000 as required by the terms of the Promissory Note plus interest and costs and for such other and further relief as this Court deems just and proper.

COUNT II
COMMON LAW FRAUD

14. Plaintiff incorporates herein paragraphs 1 through 13 above as though fully set forth hereing .

15. Upon information and belief, Remos willfully and intentionally mislead Chapa by misinforming her as to the following:

- (a) He intended to execute a loan in order to pay Chapa pursuant to the terms of the Promissory Note;
- (b) He needed to borrow an additional \$1200 in order to purchase insurance to cover the loan; and
- (c) He intended to use the additional \$1200 he borrowed from Chapa to secure the insurance and loan to pay her pursuant to the Promissory Note.

16. As a direct and proximate result of one or more of the aforementioned statements by Remos, Chapa lent an additional \$1,200 to Remos to secure the insurance and loan so that she could get paid.

17. Upon information and belief, Remos never intended to use the money to secure any insurance or any loan. Instead, upon information and belief, Remos used the money for other means.

18. As a direct and proximate result of one or more of the aforementioned statements by Remos, Chapa also was forced to incur attorneys' fees and costs in pursuing this lawsuit.

WHEREFORE, Plaintiff, MARISSA CHAPA respectfully requests for judgment to be entered against WILLIAM REMOS for an amount to be determined at trial plus costs, attorneys' fees and any other relief this Court may deem just.

MARISSA CHAPA

By: 

One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
TRESSLER, SODERSTROM, MALONEY & PRIESS LLP
Sears Tower, 22nd Floor
233 South Wacker Drive
Chicago, Illinois 60606-6308
(312) 627-4000

Promissory Note

I William Remos, 5774 N. Oleander Chicago, Illinois 60631, individually promise to pay back to the order of Marissa Chapa, 429 N. Hemlock, Wood Dale, IL 60191 the amount of \$9,000 plus 7% interest by December 17, 2006 or demand of money with a 30 day notice.

In the event that the sum is not paid back in the allotted time and the matter is taken to court William Remos will also pay back any extra interest incurred, time lost from work and lawyer fees.

Date of money issued: July 17, 2006

Location:
Bensenville, IL 60106

Name of borrower:

William Remos
5774 N. Oleander
Chicago, IL 60631

Signature: 

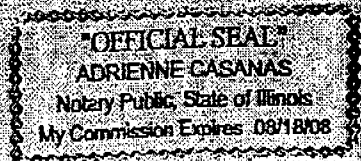
Name of lender:

Marissa Chapa
429 N. Hemlock
Wood Dale, IL 60191

Signature: 

Witness name: Adrienne Casanas

Witness signature: 



EXHIBIT

A

Promissory Note (updated)

I William Remos, 5774 N. Oleander Chicago, Illinois 60631, individually promise to pay back to the order of Marissa Chapa, 429 N. Hemlock, Wood Dale, IL 60191 the total amount of \$13,000.00 plus 7% interest by December 17, 2006 or demand of money with a 30 day notice.

In the event that the sum is not paid back in the allotted time and the matter is taken to court, William Remos will also pay back any extra interest incurred, time lost from work and lawyer fees.

Date of money issued: July 27, 2006

Location:
 Bensenville, IL 60106

Name of borrower:
 William Remos
 5774 N. Oleander
 Chicago, IL 60631

Signature: 

Name of lender:
 Marissa Chapa
 429 N. Hemlock
 Wood Dale, IL 60191

Signature: 

Witness name: Adrienne Casanas

Witness signature: _____

EXHIBIT

B



TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP
ATTORNEYS AT LAW

Sears Tower, 22nd Floor
233 S. Wacker Drive
Chicago, Illinois 60606-6399
312/627-4000
Fax 312/627-1717
www.tsmp.com

Katherine L. Haennicke
312-627-4131
khaennicke@tsmp.com

December 19, 2006

VIA U.S. MAIL - RETURN RECEIPT REQUESTED

Mr. William Remos
5774 N. Oleander
Chicago, Illinois 60631

Re: Promissory Note dated July 27, 2006

Dear Mr. Remos:

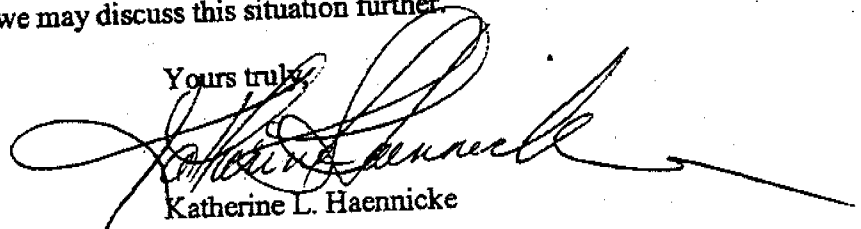
I am writing on behalf of Ms. Marissa Chapa. As you are aware, the above referenced Promissory Note came due on December 17, 2006. Pursuant to its terms, you were required to pay a total of \$13,980.00 to fulfill your obligations under the Promissory Note. In addition, Ms. Chapa recently loaned you an additional \$1,200 to obtain a loan expressly for the purpose of fulfilling the terms of the initial Agreement. The total amount due and owing is now \$15,180.00.

As of today, December 19, 2006, Ms. Chapa has not yet received payment. As a result, we are forced to pursue all legal remedies available to Ms. Chapa. Such remedies could include but are not limited to filing a lawsuit which could include a count for constructive trust to obtain the loan proceeds. We may seek a temporary restraining order so that the funds are not transferred to a third party, and if they are, we will consider adding that third party to the lawsuit as well.

Ms. Chapa stated that you may have a lawyer. If so, please have him contact me immediately so that I may send all further communications to him. If I do not hear from him, I will assume you do not have representation and will continue to communicate directly with you.

In one last final attempt to resolve this amicably, please contact me, either directly or through counsel by December 22, 2006 so that we may discuss this situation further.

Yours truly,



Katherine L. Haennicke

CC: Ms. Marissa Chapa (via e-mail)
#302082



BOLINGBROOK, ILLINOIS
LOS ANGELES, CALIFORNIA

WHEATON, ILLINOIS
NEWARK, NEW JERSEY

ORANGE COUNTY, CALIFORNIA
NEW YORK, NEW YORK



TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP
ATTORNEYS AT LAW

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312/627-4000
Fax 312/627-1717
www.tsmp.com

Katherine L. Haennicke
312-627-4131
khaennicke@tsmp.com

February 15, 2007

VIA U.S. MAIL -RETURN RECEIPT REQUESTED

Mr. William Remos
5774 N. Oleander
Chicago, Illinois 60631

Re: Promissory Note dated July 27, 2006

Dear Mr. Remos:

I am writing on behalf of Ms. Marissa Chapa. As you are aware, the above referenced Promissory Note came due on December 17, 2006. Pursuant to its terms, you were required to pay a total of \$13,980.00 to fulfill your obligations under the Promissory Note. In addition, Ms. Chapa recently loaned you an additional \$1,200 to obtain a loan expressly for the purpose of fulfilling the terms of the initial Agreement. The total amount due and owing is now \$15,180.00.

As of today, February 15, 2007, Ms. Chapa has not yet received payment. As a result, we are forced to pursue all legal remedies available to Ms. Chapa. Such remedies could include but are not limited to filing a lawsuit, which could include a count for constructive trust to obtain the loan proceeds. We may seek a temporary restraining order so that the funds are not transferred to a third party, and if they are, we will consider adding that third party to the lawsuit as well.

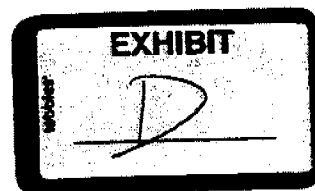
Ms. Chapa stated that you may have a lawyer. If so, please have him contact me immediately so that I may send all further communications to him. If I do not hear from him, I will assume you do not have representation and will continue to communicate directly with you.

In one last final attempt to resolve this amicably, please contact me, either directly or through counsel immediately so that we may discuss this situation further.

Yours truly,

A handwritten signature in black ink, appearing to read 'Katherine L. Haennicke', written over the typed name.

Katherine L. Haennicke



BOLINGBROOK, ILLINOIS

WHEATON, ILLINOIS

ORANGE COUNTY, CALIFORNIA

LOS ANGELES, CALIFORNIA

NEWARK, NEW JERSEY

NEW YORK, NEW YORK

Order/Trial Call (This form replaces CCM1-0643)

CCM N346-50M-8/09/04 (43480658)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DISTRICTLINE NO. 87No. 07 m1 129859

TRIAL CALL ORDER

Present before the Court: ☐ Plaintiff(s) ☐ Defendant(s) ☒ Plaintiff(s)' Counsel ☐ Defendant(s)' CounselTHIS MATTER having come before the Court, the Court having jurisdiction and being fully advised,
IT IS HEREBY ORDERED:

- 4213 ☐ Alias Summons to Issue for _____
- 4292 ☐ Amended Complaint or Petition - Allowed _____
- 4295 ☐ Close Discovery - Allowed _____
- 4235 ☐ File Counterclaim or Cross Complaint - Allowed _____
- 4234 ☐ File Appearance or Jury Demand Answer or Plead Allowed _____
- 4219 ☐ Defendant _____ is defaulted; cause set for
- 4247 ☐ PROVE-UP on _____ at _____ a.m./p.m.
- 4406 ☐ Set for STATUS. All parties must appear _____ at _____ m. in Room _____
- 4482 ☒ Set for TRIAL on _____ at _____ m. in Room _____
- 8005 ☒ Case Dismissed for Want of Prosecution
- 8011 ☐ Case Dismissed by Agreement of Parties/No Cost ☐ With ☐ Without Prejudice
- 8031 ☒ X-Parte Default Judgment for Plaintiff for \$ 16,517.30 v. Kempas (Defendant)
- 8001 ☐ Judgment for Plaintiff after trial for \$ _____ with costs assessed v. _____ (Defendant)
- 4293 ☒ Assess Costs - Allowed
- 8002 ☐ Judgment for Defendant _____ after trial
- 9207 ☐ it being further agreed that installment payments be made as follows: _____

()
9208 ☒ Order Final and Appealable() ☐ See Attached Order: _____

4304 The date of _____ is hereby stricken.

Atty. No. 14503Name: Tracy, Venturini, Wynn & Pless LLPAtty. for: ITAddress: 233 S. Wacker 22nd FloorCity/State/Zip: Chicago, IL 60606Telephone: (312) 827-4000

ENTERED:

Judge Lawrence O'Connell

Dated: _____

MAY 31 2007

Court - 1830

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT

2

**U.S. Bankruptcy Court
Northern District of Illinois**

In re:

Bankruptcy Case No. **08-00472**

WILLIAM P. REMOS AND MARISSA CHAPA

Debtor

Adversary Proceeding No. **08-00198**

MARISSA CHAPA

Plaintiff

v.
WILLIAM P. REMOS

Defendant

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to complaint which is attached to this summon to the Clerk of the Bankruptcy Court within 30 days from the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days of issuance.

Address of Clerk

**Clerk, U.S. Bankruptcy Court
Northern District of Illinois
219 S Dearborn
Chicago, IL 60604**

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney:

Name and Address of Plaintiff's Attorney

**Pete V Albanis
233 South Wacker Drive 22nd Floor
Chicago, IL 60606**

If you make a motion, your time to answer is governed by Federal Rule of Bankruptcy Procedure 7012.

YOU ARE NOTIFIED that a status hearing has been set at the following time and place:

Address

**Dirksen Federal Building
219 South Dearborn
Courtroom 644
Chicago IL 60604**

Status Hearing Date and Time
04/29/2008 at 10:30AM

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGEMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.




Kenneth S. Gardner, Clerk Of Court

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Pamela S. Hollis Hearing Date April 29, 2008
Bankruptcy Case No. 08 B 472 Adversary No. 08 A 198
Title of Case Marissa Chapa v. William P. Remos

Brief
Statement of STATUS HEARING ON COMPLAINT
Motion

Names and
Addresses of
moving
counsel

Representing

ORDER

For the reasons stated in open Court,

ENTER ORDERED that the complaint is dismissed for want of prosecution.

Pamela S. Hollis (A)

cc: Pete V. Albanis (electronic notice)

William P. Remos

KH/#326051

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

William Remos,

Debtor.

MARISSA CHAPA,

Plaintiff,

v.

WILLIAM REMOS,

Defendant.

Case No. 08 BK 472

Chapter 7

Honorable Pamela S. Hollis
U.S. Bankruptcy Judge

Adversary No. 08 A 198

**MOTION TO VACATE ORDER OF APRIL 29, 2008,
REOPEN ADVERSARY PROCEEDING AND REINSTATE COMPLAINT**

NOW COMES Plaintiff, MARISSA CHAPA ("Chapa"), moves this Honorable Court to vacate the Order of April 29, 2008, Reopen Adversary Proceeding, and Reinstate the Complaint against Defendant, WILLIAM REMOS ("Remos"). In support of such motion states as follows:

I. INTRODUCTION

1. On April 4, 2008, Chapa filed the lawsuit against Remos.
2. This matter was set for a return date of April 29, 2008 and an initial status date of April 29, 2008.
3. Due to an unintentional oversight, counsel for Chapa failed to appear at the hearing on April 29, 2009.
4. Chapa respectfully requests that the DWP entered on April 29, 2008 be vacated, the adversary proceeding be reopened and that her Complaint against Remos be reinstated.

5. Counsel spoke to Judge Hollis' courtroom deputy and she informed counsel that the case was dismissed for want of prosecution and advised counsel to file a motion to vacate the DWP.

6. Remos will not be prejudiced by the granting of this motion as Remos has yet to file an answer to the Complaint.

WHEREFORE, Plaintiff, MARISSA CHAPA prays for an order from this Honorable Court vacating the order of April 29, 2008, reopening the adversary proceeding, and reinstating her Complaint against Defendant, WILLIAM REMOS.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on May 5, 2008 a copy of the foregoing document was served upon the counsel of record listed by:

- Electronically filing via court ECF system:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
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312-876-7100
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Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792

Counsel for William Remos

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

KH1/cic/326117

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No. 08 BK 472
Debtor.)	
	)	Chapter 7
<hr style="width: 30%; margin-left: 0;"/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF MOTION

TO: **SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 13th day of May, 2008 at 10:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Pamela Hollis or any judge sitting in her stead, in the courtroom usually occupied by her in Room 644 of the United States District Courthouse, Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604 shall then and there present a **Motion to Vacate Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate Complaint**, a copy of which is attached hereto and hereby served upon you.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

SERVICE LIST

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
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Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792

Counsel for William Remos

326118

KH/#326900

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No. 08 BK 472
Debtor.)	
	)	Chapter 7
<u>MARISSA CHAPA,</u>)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE
COURT'S MAY 13, 2008 ORDER DENYING HER MOTION TO
VACATE ORDER OF APRIL 29, 2008, REOPEN ADVERSARY PROCEEDING
AND REINSTATE COMPLAINT**

Plaintiff, MARISSA CHAPA ("Chapa"), hereby moves this Honorable Court to Reconsider its May 13, 2008 order pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure, Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding, and Reinstate the Complaint against Defendant, WILLIAM REMOS ("Remos"). In support of such motion states as follows:

INTRODUCTION

1. On April 4, 2008, Plaintiff filed her adversary proceeding against the debtor, William Remos.
2. Upon filing the motion, secretary for counsel to the Plaintiff did not get the

payment screen. Upon contacting the clerk, secretary for counsel to the Plaintiff was informed she would have to bring a check to the Northern District of Illinois Bankruptcy Court as soon as possible. Counsel also learned that the date for the appearance on the status of the summons may be changed.

3. Shortly after receiving the April 29, 2008 order, counsel filed a Motion to Vacate the order, reopen adversary proceedings and reinstate complaint. The motion was filed on May 5, 2008, which was the fourth business day after the order was entered.

4. The hearing for the Motion to Vacate was set for May 13, 2008. At this hearing, counsel for the debtor stated that they did not receive proper notice because they had yet to appear or answer in the adversary proceeding.

5. Counsel for the debtor also argued that to allow this matter would be outside the time of filing the adversary proceeding, and therefore the motion to vacate should not be granted due to the purported prejudice to defendant.

6. Lastly, the Court relied on the fact that counsel for the Plaintiff mistakenly did not appear on April 29, 2008.

ARGUMENT

7. Rule 41 of the Federal Rules of Civil Procedure applies to adversary proceedings. Fed.Rul.Bank.P. 7041. Therefore case law regarding Fed.R.Civ.P. 41 is applicable in the matter at hand.

8. Dismissal for want of prosecution is an “undeniably harsh sanction, having the procedural effect of an adjudication on the merits against the plaintiff.” *In the Matter of Bluestein & Co.*, 68 F.3d 1022, 1025 (7th Cir. 1995). This penalty is so severe that it must be allowed only in extreme situations such as when there is a “*clear record of delay* or

contumacious conduct, or when other less drastic sanctions have proven unavailing.” *Pyramid Energy, Ltd. v. Heyl & Patterson, Inc.*, 869 F.2d 1058, 1061 (7th Cir. 1989)(emphasis original), quoting *Webber v. Eye Corporation*, 721 F.2d 1067, 1069 (7th Cir. 1983).

9. In addition, the Seventh Circuit has repeatedly held that the district court may not dismiss a case for want of prosecution without first providing an explicit warning to the plaintiff. *Sharif v. Wellness Intern. Network, Ltd*, 376 F.3d 720 (7th Cir. 2004).

10. It was a manifest error of law or fact and/or a mistake by the Court to dismiss this cause of action without an explicit warning to the Plaintiff and to not grant Plaintiff’s Motion to Vacate the Dismissal and reopen the proceedings.

11. First, the Court entertained the objections of a party who, by their own admission, had not appeared or answered in this matter. The party therefore did not have standing to object. Additionally, this party clearly would not have been prejudiced by the granting of the motion to vacate as it was still within the time period for the debtor to answer or otherwise plead.

12. Although the time to file an adversary proceeding had passed, this argument is a red herring. The adversary proceeding in question was filed within the appropriate time period. The Court would be reopening the original matter, not allowing a new matter to be filed. The matter at hand would relate back to the original adversary complaint, not any newly filed complaint.

13. Lastly, counsel inadvertently missed the first court date. Due to system errors, the original date of April 29, 2008 was not docketed within counsel’s docketing system. As such, counsel was unaware of the appearance date. Counsel sincerely apologizes to the Court for missing the very first status date in the adversary proceedings, but affirmatively states that it was not intentional.

14. Clearly the above mistake does not rise to the level of "*clear record of delay* or contumacious conduct" and other less drastic sanctions have not proven unavailing as no other sanctions have occurred in this matter. This was the first time counsel committed an inadvertent mistake of not appearing in court for the very first status appearance.

15. Counsel affirmatively states that the facts in this motion are true and accurate to the best of their knowledge.

CONCLUSION

WHEREFORE, Plaintiff, Marissa Chapa, respectfully requests that this Court grant her Motion To Reconsider, enter an order vacating the April 29, 2008 order, Reopen Adversary Proceeding, and Reinstate the Complaint against Defendant, and for such additional relief that this Court deems just and proper.

Dated: This 19th day of May, 2008.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on May 19, 2008 a copy of the foregoing document was served upon the counsel of record listed by:

- Electronically filed, with service via U.S. MAIL to the below individuals:

William T Neary
Office of the U.S. Trustee, Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606
312-886-5785
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792

Counsel for William Remos

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

KH1/cic/326117

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No. 08 BK 472
Debtor.)	
	)	Chapter 7
<hr style="width: 300px; margin-left: 0;"/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 22nd day of May, 2008 at 10:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Pamela Hollis or any judge sitting in her stead, in the courtroom usually occupied by her in Room 644 of the United States District Courthouse, Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604 shall then and there present a **Motion for Reconsideration of the Court's May 13, 2008 Denying Her Motion to Vacate Order of April 29, 2008, Reopen Adversary Proceeding and Reinstate Complaint**, a copy of which is attached hereto and hereby served upon you.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borgia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

SERVICE LIST

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U.S. Trustee

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20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792

Counsel for William Remos

326118

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Trustee

KH/#326900

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

William Remos,

Debtor.

MARISSA CHAPA,

Plaintiff,

v.

WILLIAM REMOS,

Defendant.

Case No. 08 BK 472

Chapter 7

Honorable Pamela S. Hollis
U.S. Bankruptcy Judge

Adversary No. 08 A 198

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE
COURT'S MAY 13, 2008 ORDER**

Plaintiff, MARISSA CHAPA ("Chapa"), hereby moves this Honorable Court to Reconsider its May 13, 2008 order pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure in which it denied her Motion to Vacate the Order of April 29, 2008, Reopen Adversary Proceeding, and Reinstate the Complaint against Defendant, WILLIAM REMOS ("Remos"). In support of such motion states as follows:

INTRODUCTION

1. On April 4, 2008, Plaintiff filed her adversary proceeding against the debtor, William Remos.
2. Upon filing the motion, secretary for counsel to the Plaintiff did not get the payment screen. Upon contacting the clerk, secretary for counsel to the Plaintiff was informed

she would have to bring a check to the Northern District of Illinois Bankruptcy Court as soon as possible. Counsel also learned that the date for the appearance on the status of the summons may be changed.

3. Shortly after receiving the April 29, 2008 order, counsel filed a Motion to Vacate the order, reopen adversary proceedings and reinstate complaint. The motion was filed on May 5, 2008, which was the fourth business day after the order was entered.

4. The hearing for the Motion to Vacate was set for May 13, 2008. At this hearing, counsel for the debtor stated that they did not receive proper notice because they had yet to appear or answer in the adversary proceeding.

5. Counsel for the debtor also argued that to allow this matter would be outside the time of filing the adversary proceeding, and therefore the motion to vacate should not be granted due to the purported prejudice to defendant.

6. Lastly, the Court relied on the fact that counsel for the Plaintiff mistakenly did not appear on April 29, 2008.

ARGUMENT

7. Rule 41 of the Federal Rules of Civil Procedure applies to adversary proceedings. Fed.Rul.Bank.P. 7041. Therefore case law regarding Fed.R.Civ.P. 41 is applicable in the matter at hand.

8. Dismissal for want of prosecution is an “undeniably harsh sanction, having the procedural effect of an adjudication on the merits against the plaintiff.” *In the Matter of Bluestein & Co.*, 68 F.3d 1022, 1025 (7th Cir. 1995). This penalty is so severe that it must be allowed only in extreme situations such as when there is a “clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing.” *Pyramid*

Energy, Ltd. v. Heyl & Patterson, Inc., 869 F.2d 1058, 1061 (7th Cir. 1989)(emphasis original), quoting *Webber v. Eye Corporation*, 721 F.2d 1067, 1069 (7th Cir. 1983).

9. In addition, the Seventh Circuit has repeatedly held that the district court may not dismiss a case for want of prosecution without first providing an explicit warning to the plaintiff. *Sharif v. Wellness Intern. Network, Ltd*, 376 F.3d 720 (7th Cir. 2004).

10. It was a manifest error of law or fact and/or a mistake by the Court to dismiss this cause of action without an explicit warning to the Plaintiff and to not grant Plaintiff's Motion to Vacate the Dismissal and reopen the proceedings.

11. First, the Court entertained the objections of a party who, by their own admission, had not appeared or answered in this matter. The party therefore did not have standing to object. Additionally, this party clearly would not have been prejudiced by the granting of the motion to vacate as it was still within the time period for the debtor to answer or otherwise plead.

12. Although the time to file an adversary proceeding had passed, this argument is a red herring. The adversary proceeding in question was filed within the appropriate time period. The Court would be reopening the original matter, not allowing a new matter to be filed. The matter at hand would relate back to the original adversary complaint, not any newly filed complaint.

13. Lastly, counsel inadvertently missed the first court date. Due to system errors, the original date of April 29, 2008 was not docketed within counsel's docketing system. As such, counsel was unaware of the appearance date. Counsel sincerely apologizes to the Court for missing the very first status date in the adversary proceedings, but affirmatively states that it was not intentional.

14. Clearly the above mistake does not rise to the level of "*clear record of delay or*

contumacious conduct” and other less drastic sanctions have not proven unavailing as no other sanctions have occurred in this matter. This was the first time counsel committed an inadvertent mistake of not appearing in court for the very first status appearance.

15. Counsel affirmatively states that the facts in this motion are true and accurate to the best of their knowledge.

CONCLUSION

WHEREFORE, Plaintiff, Marissa Chapa, respectfully requests that this Court grant her Motion To Reconsider, enter an order vacating the April 29, 2008 order, Reopen Adversary Proceeding, and Reinstate the Complaint against Defendant, and for such additional relief that this Court deems just and proper.

Dated: This 20th day of May, 2008.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

CERTIFICATE OF SERVICE

The undersigned certifies that on May 20, 2008 a copy of the foregoing document was served upon the counsel of record listed by the below identified method:

- Electronically filed, with service via U.S. MAIL AND FACSIMILE (unless otherwise indicated) to the below individuals:

William T Neary
Office of the U.S. Trustee, Region 11
219 S. Dearborn
Room 873
Chicago, Illinois 60604
Fax: 312-886-5794
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Fax: 312-876-0288
Trustee

Kerrie S Neal
Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
312 782-9792
Fax: 312-782-0483
Counsel for William Remos

William Remos (Via U.S. Mail only)
5774 N. Oleander
Chicago, Illinois 60631

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

KH1/#326994

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No. 08 BK 472
Debtor.)	
	)	Chapter 7
MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 22nd day of May, 2008 at 10:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Pamela Hollis or any judge sitting in her stead, in the courtroom usually occupied by her in Room 644 of the United States District Courthouse, Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604 shall then and there present a **Motion for Reconsideration of the Court's May 13, 2008 Order**, a copy of which is attached hereto and hereby served upon you.

MARISSA CHAPA

By: /s/Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
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SERVICE LIST

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U.S. Trustee

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20 North Clark St
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312 782-9792
Fax: 312-782-0483
Counsel for William Remos

326118

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
312-876-7100
Fax: 312-876-0288
Trustee

William Remos (Via U.S. Mail only)
5774 N. Oleander
Chicago, Illinois 60631

KH/#327069

7751-1

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

William Remos,

Debtor.

MARISSA CHAPA,

Plaintiff,

v.

WILLIAM REMOS,

Defendant.

Case No. 08 BK 472

Chapter 7

Honorable Pamela S. Hollis
U.S. Bankruptcy Judge

Adversary No. 08 A 198

PROPOSED ORDER

THIS CAUSE, having come before the Court on the Matter of Plaintiff's Motion to Reconsider, due notice having been given and the Court fully advised of the premises herein:

IT IS HEREBY ORDERED:

1. Plaintiff's Motion to Reconsider is granted.
2. The Court vacates its Order of April 29, 2008 and vacates the dismissal for want of prosecution.
3. The Court hereby reopens the Adversary Proceeding of Chapa v. Remos, 08 AP 198.
4. The Court reinstates the complaint filed by Chapa against Remos.

BY THE COURT

Honorable Pamela Hollis

Date: _____

APPEARANCE

United States Bankruptcy Court

For the Northern District of Illinois

In re

Debtor*

William Remos

No.

08A00198

I, THE UNDERSIGNED, HEREBY FILE MY APPEARANCE AS ATTORNEY FOR

William Remos

Thomas Thomey

Print Name on this Line

/s/ Thomas Thomey

Signature

ATTORNEY ID NUMBER:

627-3191

Zalutsky & Pinski

Firm Name

FIRM ID NUMBER:

3101428

20 N. Clark St, Suite 600

Street Address

Chicago, IL 60602

City

State

Zip

Telephone

312-782-9792

Trial Attorneys*

Print Name

*Request is made for trial attorney to avoid possible conflicts in scheduling.

DATED: _____

TYPE OF DEFENSE COUNSEL:

CJA _____, RETAINED _____, SELF _____, NONE OTHER _____, PUB DEF _____

FOR OFFICE USE ONLY:

Party Code: P _____ D _____ TP _____

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No.: 08 BK 472
Debtor.)	
	)	Chapter 7
<hr style="width: 300px; margin-left: 0;"/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

NOTICE OF APPEAL TO DISTRICT COURT

PLEASE TAKE NOTICE, that Marissa Chapa, the Plaintiff, appeals under 28 U.S.C. 158(a)(1), from orders dated April 29, 2008 and May 13, 2008, attached hereto and order from May 22, 2008 announced in Court, of the Bankruptcy Judge Pamela S. Hollis, entered in the adversary proceeding, ordering: 1) the dismissal for want of prosecution; 2) denial of Plaintiff's Motion Vacate a Order of April 29, 2008, Reopening the adversary proceeding, and Reinstating her Complaint against Defendant; and 3) denial of Plaintiff's Motion to Reconsider, respectively. (See Order, Exhibit 1 and Notice of Electronic Filing of Order, Exhibit 2).

Attached hereto is Plaintiff's Statement of Election, requesting her appeal to be heard by the District Court pursuant to 28 U.S.C. §158(c)(1). (See Statement, Exhibit 3).

The names of all other parties to the order appealed from and the names, address and telephone numbers of their respective attorneys are as follows:

William Remos, the Debtor
5774 N. Oleander
Chicago, Illinois 60631

Thomas Twomey
Zalutsky & Pinski, Ltd.
20 North Clark St
Suite 600
Chicago, IL 60602
Phone: 312-782-9792
Fax: 312-782-0483
Counsel for William Remos

William T Neary
Office of the U.S. Trustee, Region 11
219 S. Dearborn
Room 873
Chicago, Illinois 60604
Phone: 312-886-5785
Fax: 312-886-5794
U.S. Trustee

Barry A Chatz
Arnstein & Lehr
120 South Riverside Plaza Ste 1200
Chicago, IL 60606
Phone: 312-876-6670
Fax: 312-876-6241
Trustee

Respectfully submitted,

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borcia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Pamela S. Hollis Hearing Date April 29, 2008
Bankruptcy Case No. 08 B 472 Adversary No. 08 A 198
Title of Case Marissa Chapa v. William P. Remos
Brief Statement of Motion STATUS HEARING ON COMPLAINT
Names and Addresses of moving counsel
Representing

ORDER

For the reasons stated in open Court,

ENTER ORDERED that the complaint is dismissed for want of prosecution.

Pamela S. Hollis

cc: Pete V. Albanis (electronic notice)

William P. Remos

-----Original Message-----

From: USBC_ILNB@ilnb.uscourts.gov [mailto:USBC_ILNB@ilnb.uscourts.gov]

Sent: Tuesday, May 13, 2008 11:45 AM

To: CourtMail@ilnb.uscourts.gov

Subject: Ch- PSH 08-00198 Chapa v. Remos Order on Motion to Vacate

*****NOTE TO PUBLIC ACCESS USERS***** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

U.S. Bankruptcy Court

Northern District of Illinois

Notice of Electronic Filing

The following transaction was received from Austin, Lynda entered on 05/13/2008 at 11:43 AM CDT and filed on 05/13/2008

Case Name: Chapa v. Remos

Case Number: 08-00198

Document Number: 8

Docket Text:

(E)Order Denying for the Reasons Stated on the Record Motion To Vacate (Related Doc # [6]).

Signed on 05/13/2008. (Austin, Lynda)

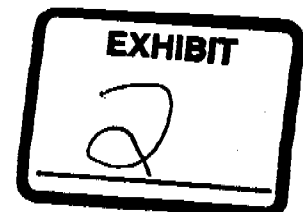
The following document(s) are associated with this transaction:

Notice will be electronically mailed to:

Pete V Albanis palbanis@tsmp.com, tsmpdocket@tsmp.com

Notice will not be electronically mailed to:

William P. Remos



**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	
William Remos,)	
	)	Case No.: 08 BK 472
Debtor.)	
	)	Chapter 7
<hr/> MARISSA CHAPA,)	
	)	Honorable Pamela S. Hollis
Plaintiff,	)	U.S. Bankruptcy Judge
)	
v.	)	Adversary No. 08 A 198
)	
WILLIAM REMOS,)	
)	
Defendant.)	

STATEMENT OF ELECTION

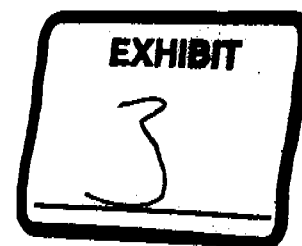
NOW COMES Plaintiff, MARISSA CHAPA ("Chapa"), for her Statement of Election,
requests that her appeal be heard by the District Court pursuant to 28 U.S.C. §158(c)(1).

Respectfully submitted,

MARISSA CHAPA

By: /s/ Panagiotis Albanis
One of Her Attorneys

James K. Borgia
Katherine L. Haennicke
Panagiotis Albanis
Tressler, Soderstrom, Maloney & Priess, LLP
233 South Wacker Drive
Sears Tower, 22nd Floor
Chicago, IL 60606-6399
(312) 627-4000



United States Bankruptcy Court

NORTHERN DISTRICT OF ILLINOIS

219 S Dearborn Street

Chicago, IL 60604

Kenneth S. Gardner, Bankruptcy Clerk

Date	05/27/2008
Case Number	Chapa v Remos
Case Name	08 A 198
Notice of Appeal Filed	5/23/2008
Notice of Cross Appeal Filed	

Dear Sir/Madam:

A Notice of Appeal having been filed pursuant to **Bankruptcy Rule 8002**, please be notified that the Record on Appeal will be transmitted to the United States District Court when the record is complete for the purpose of appeal.

Bankruptcy Rule 8006 requires that, within ten (10) days of the filing of the Notice of Appeal, the Appellant must file the following with the Clerk of the United States Bankruptcy Court:

- ▶ A Designation of the Content of the Record on Appeal
- ▶ A Statement of the Issues to be presented on Appeal

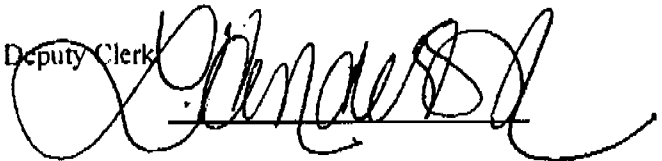
If the above are not filed within the ten (10) day time period as provided by **Bankruptcy Rule 8006**, the appeal will not be perfected.

Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated. If the party fails to provide the copy of the items designated, the clerk shall prepare the copy at the party's expense.

Bankruptcy Rule 8006 further states: If the record designated by any party includes a transcript of any proceeding, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and made satisfactory arrangements for payment of its cost.

Local Rule 9070-1(B) states: Upon request, parties shall make the exhibits and transcripts or copies thereof available to any other party to copy at its expense.

By Deputy Clerk



cc: Bankruptcy Judge & Attorneys of Record

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Chapa v. Remos,

) No. 08 B 00427
) No. 08 A 00198
) Chicago, Illinois
) 10:00 a.m.
) May 13, 2008

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE JUDGE PAMELA S. HOLLIS

APPEARANCES:

For Marissa Chapa:

Mr. Pete V. Albanis

For Adversary Plaintiff:

Ms. Tiffany Quinn;

Court Reporter:

Nicole Abbate
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

1 THE CLERK: William and Marissa Chapa.
2 08 B 472 and 08 A 198.

3 MR. ALBANIS: Good morning, Your
4 Honor. Pete Albanis on behalf of the adversary
5 plaintiff.

6 MS. QUINN: Tiffany Quinn on behalf of
7 debtor.

8 THE COURT: I've got your motion.
9 The case appears to be closed.
10 We don't need a reopening fee.

11 THE CLERK: I need a reopening fee for
12 further hearing if you grant it.

13 MS. QUINN: Your Honor, I'm opposing
14 the motion to vacate.

15 The moving creditor, you know, did not
16 show up on the status hearing so it was dismissed.

17 They allege in the motion that my
18 client will not be prejudiced since the deadline to
19 file the complaint has passed. Obviously if this
20 most is granted, my client, you know, would be to his
21 detriment.

22 Also, I'm alleging that notice was
23 insufficient in the motion to vacate. The
24 certificate of service states that we are noticed via

1 the ECF system.

2 However, since the case was dismissed
3 prior to our answer being due, we never filed a
4 notice of appearance. So we are not on the ECF
5 system.

6 Under this case number, my client was
7 not served notice. I don't think anyone received
8 notice.

9 THE COURT: Mr. Albanis.

10 MR. ALBANIS: Judge, the reason that
11 we didn't appear on April 29th was because of an
12 inadvertent error.

13 What happened was when we filed our
14 adversary complaint on April 3rd, we didn't receive
15 the payment screen for the filing system.

16 So we contacted the filing clerk and
17 we were advised that the case set for April 29th
18 would be reset for a later date.

19 THE COURT: Hold on.

20 What clerk advised you of that?

21 MR. ALBANIS: I believe it was the
22 E-filing -- the ECF.

23 THE COURT: So they told you you
24 didn't have to appear?

1 MR. ALBANIS: They told us they were
2 going to reset the case for another -- for another
3 date, Judge.

4 THE COURT: That doesn't happen,
5 counsel. And I'd be very surprised if the clerk's
6 office told you that.

7 Did you speak to them directly?

8 MR. ALBANIS: I did not. My secretary
9 spoke to them, Judge.

10 THE COURT: You should be very careful
11 when you inform this court because they don't do that
12 kind of stuff.

13 Unfortunately, we get a lot of "Ken
14 Gardner's staff told me this," and then we go back
15 and check with Ken Gardner and that never happened.
16 And I doubt very seriously they told you they were
17 going to reset something that was before this court.

18 THE CLERK: All I know, Judge, is that
19 they go by the date on the summons, and the summons
20 was issued on the date when the attorney filed it.

21 THE COURT: I'm going to deny your
22 motion to vacate. The case is dismissed based on the
23 objections of the debtor. The debtor will be
24 prejudiced. The debtor incurred damages, the debtor

1 showed up. You guys didn't show up. You know, now
2 you're saying the clerk told your secretary you
3 didn't have to show up.

4 The motion is denied.

5 MS. QUINN: Thank you, Your Honor.

6 (Which were all the proceedings had in
7 the above-entitled cause, May 13, 2008, 10:00 a.m.)

8 I, NICOLE ABBATE, DO HEREBY CERTIFY
9 THAT THE FOREGOING IS A TRUE AND ACCURATE
10 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
11 ENTITLED CAUSE.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

William Remos,	)	No. 08 A 198
	)	Chicago, Illinois
	)	10:30 a.m.
Debtor.	)	April 29, 2008

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE PAMELA HOLLIS

APPEARANCES:

For the Debtor: Ms. Tiffany Quinn;

Court Reporter: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

1 THE CLERK: William Remos, 08 B 472,
2 and, 08 A 198.

3 MS. QUINN: Good morning, Your Honor.
4 Tiffany Quinn on behalf of the debtor.

5 Your Honor, our answer is due May 5th,
6 so I was hoping we could continue this status
7 hearing. I have not spoken with moving counsel.

8 THE COURT: Okay. So you want until
9 when?

10 MS. QUINN: Our answer is due May 5th.

11 THE COURT: Well, where is the
12 plaintiff?

13 MS. QUINN: I don't know. I have not
14 spoken with him.

15 THE COURT: Normally when they are not
16 here, I dismiss for want of prosecution. I mean,
17 this is their lawsuit, right?

18 MS. QUINN: Correct.

19 THE COURT: Did you get any calls?

20 THE CLERK: No, Judge.

21 THE COURT: Is this a pro se or was it
22 done by an attorney?

23 MS. QUINN: An attorney.

24 THE COURT: Well, what do you want to
25 do? I will give you your choice. I would be

1 inclined to dismiss it for want of prosecution.

2 MS. QUINN: I would not oppose that.

3 THE COURT: All right. Dismissed.

4 MS. QUINN: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 (Which were all the proceedings had in
7 the above-entitled cause, April 29,
8 2008, 10:30 a.m.)

9 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY
10 THAT THE FOREGOING IS A TRUE AND ACCURATE
11 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
12 ENTITLED CAUSE.
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

William Remos,	)	No. 08 A 198
	)	Chicago, Illinois
	)	10:00 a.m.
Debtor.	)	May 22, 2008

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE PAMELA HOLLIS

APPEARANCES:

For the Debtor:	Ms. Tiffany Quinn;
For Marissa Chapa:	Ms. Katherine Haennicke;

Court Reporter:	Amy Doolin, CSR, RPR
	U.S. Courthouse
	219 South Dearborn
	Room 661
	Chicago, IL 60604.

1 THE CLERK: William Remos, 08 A 198,
2 Chapa v. Remos.

3 MS. HAENNICKE: Good morning, Your
4 Honor. Katherine Haennicke on behalf of Marissa
5 Chapa. I apologize for the voice.

6 MS. QUINN: Tiffany Quinn on behalf of
7 the debtor.

8 THE COURT: Okay.

9 MS. HAENNICKE: Judge, I'm here on our
10 motion to reconsider.

11 THE COURT: Right. Motion to
12 reconsider the motion to reconsider is what it is.

13 And here's what really, really got me
14 on this one, was this statement that it was the clerk
15 who told you you didn't have to appear on the status.
16 And that was what was represented to me, and I know
17 that isn't the case. And now the motion is a little
18 bit different. It is saying maybe the status might
19 be changed, so I am not getting the straight deal
20 from you folks.

21 MS. HAENNICKE: What had occurred was
22 when we had filed, unfortunately, due to the
23 software, our pop-up screen to pay did not come up
24 and, therefore, we had to have a check issued. When
25 the clerk called to inform us that it hadn't gone

1 through, they had said that the summons date would
2 change.

3 When we went to go pay on that Monday
4 and actually brought a physical check to the clerk,
5 they had said that the summons date may change, and
6 so that's where the confusion was. Then when the
7 date came up, we were not aware of it. We sincerely
8 apologize to the court for not appearing.

9 THE COURT: That's not what's
10 troubling me. It's that I don't think it was
11 represented to me accurately as to why there was a
12 mistake. You probably would have had your motion
13 granted had you not said the clerk told us we didn't
14 have to show up.

15 MS. HAENNICKE: Right.

16 THE COURT: I know that's not the
17 case. The clerk doesn't do that. I have discussions
18 with the clerk all the time about that. And it's a
19 matter of a situation where attorneys like to do that
20 when it is their error. They like to turn around and
21 blame it on the clerk.

22 On the other hand, we have a situation
23 where I think I generally agree with the case
24 authority that's been cited. It is a drastic remedy.
25 And I would have granted your motion but for what I

1 felt was not a proper representation to the court.
2 So that's where I am hung up, if you would like to
3 respond.

4 MS. QUINN: Your Honor, yes. I do
5 still oppose the motion to reconsider. In paragraph
6 11 they state that I do not have standing to object
7 because we have not appeared yet. The case was
8 closed. I didn't know you could even file an
9 appearance in a closed case.

10 But I think that strengthens the
11 argument that the motion to vacate was properly
12 denied. There was no notice of that motion. Nobody
13 was served notice. The debtor is not even listed on
14 the service list. So there was notice of --

15 THE COURT: That was the first thing I
16 brought up. I don't have proper notice.

17 MS. QUINN: And then even on this
18 motion, I'm once again going to allege improper
19 notice. By their own admission when they filed this
20 current motion we had still not filed our appearance.
21 The debtor was served notice via U.S. mail only. You
22 cannot notice a motion out for two days and send the
23 only party in interest mail -- I mean, notice through
24 U.S. mail.

25 MS. HAENNICKE: This was the second

1 notice. Unfortunately, as I had spoken to
2 Mr. Austin, this -- when I talked to Ms. Epps, she
3 had informed me that when we filed it on Monday we
4 had filed it under the wrong code, and so, therefore,
5 we had to refile on Tuesday under a different code.

6 And that's what the difference was.
7 When we refiled it, that's when we did go ahead and
8 put the debtor in because of the appearance of
9 counsel at the last court appearance. That's why we
10 included counsel. And we did fax them and they have
11 proper notice.

12 MS. QUINN: I'm alleging the debtor
13 never received notice. On the notice that they
14 mailed out the 19th, debtor once again was not on the
15 certificate of service. When they renoticed the
16 motion on the 20th, they sent debtor notice through
17 U.S. mail. We didn't file our appearance until
18 yesterday.

19 So when they sent out notice, we were
20 not representing the debtor, according to their own
21 admission and their allegation in paragraph 11. So I
22 would still say the debtor was not sent proper
23 notice. Our notice arrived at 6:20 p.m. the day
24 before, so I would still like -- we only had one-day
25 notice.

1 THE COURT: Well, okay. You only had
2 one-day notice. This is a drastic remedy. I'm
3 really ticked, I got to tell you. I do not like it
4 when I am not told the truth, and I don't think I
5 was. And that principally was driving -- not to --
6 also setting aside the fact that there wasn't notice,
7 and I pointed that out right at the beginning, that
8 notice wasn't proper. And now that time periods have
9 gone by -- and it doesn't sound like it's still been
10 corrected.

11 Can you file some authority in
12 response?

13 MS. QUINN: Yes, if you would like,
14 Your Honor. Yes, we would like time to --

15 THE COURT: Yes. I'd like for you to
16 file a written response, because I'm very leary of
17 granting the motion to reconsider the reconsider.

18 MS. HAENNICKE: But, Your Honor, the
19 other thing, too, is if you would like, we would be
20 more than happy to renotice it with all the parties
21 via U.S. mail and we can continue --

22 THE COURT: I'm not going to tell you
23 how to practice law. You know, I'm going to let
24 counsel say what she wants to say and then you do
25 what you think is appropriate. If you think there is

1 MS. HAENNICKE: That's what we're
2 trying to seek, Your Honor.

3 THE COURT: Have you paid -- they
4 don't need to.

5 THE CLERK: No, not in the adversary.

6 THE COURT: So the adversary has been
7 closed. The underlying case is closed.

8 MS. QUINN: Correct. Right. And the
9 motion to vacate had no proper service.

10 THE COURT: I'm not going to file any
11 briefs. I'm just denying this motion. That's the
12 proper way to do it. This just has not occurred
13 correctly. So it would be inappropriate for me to
14 set a briefing schedule when service isn't proper.

15 Okay. So the motion is denied.

16 MS. QUINN: Thank you, Your Honor.

17 MS. HAENNICKE: Thank you, Your Honor.

18 (Which were all the proceedings had in
19 the above-entitled cause, May 22,
20 2008, 10:00 a.m.)

21 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY
22 THAT THE FOREGOING IS A TRUE AND ACCURATE
23 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
24 ENTITLED CAUSE.
25